

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>KAREN C. ROLES</b>	)	
Claimant	)	
VS.	)	
	)	
<b>THE BOEING COMPANY</b>	)	Docket No. 270,077
Respondent	)	
AND	)	
	)	
<b>INSURANCE COMPANY STATE OF</b>	)	
<b>PENNSYLVANIA</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the May 10, 2004 preliminary hearing Order of Special Administrative Law Judge Vincent L. Bogart. Claimant was granted continuing medical benefits with Daniel C. Doornbos, M.D., but denied her Motion to change treating physician and denied her request for the medical treatment to be transferred to the State of Florida. Claimant raises the following issues on appeal to the Workers Compensation Board (Board).

**ISSUES**

- "1. Whether claimant should be compelled to return to Kansas at the risk of her health;
- "2. Whether testing to determine whether claimant is a candidate for a lung transplant should be performed in Florida;
- "3. Whether a change of treating physicians to doctors in Florida should be granted."

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter was originally presented to Special Administrative Law Judge (ALJ) Vincent L. Bogart on March 18, 2004, after which the Special ALJ awarded claimant medical benefits with Dr. Doornbos to determine if claimant is a candidate for a lung

transplant. That Order of March 19, 2004, was not appealed. Shortly thereafter, claimant provided her Notice of Intent to request a change of treating physician. The actual Motion to change treating physician was filed on May 5, 2004, with the matter going to hearing before Special ALJ Bogart on May 6, 2004. As a result of that hearing, the Special ALJ issued an Order dated May 10, 2004, which stated,

The Claimant's motion to change physician is denied.

Court Order of March 19, 2004, remains in full force and effect: Dr. Doornbos is directed to determine if the Claimant is a candidate for a lung transplant and if so, causation.

That is the Order from which this appeal was generated.

Respondent argues that the Board does not have jurisdiction to consider this matter, as it is not one of the jurisdictional issues which allow appeals from preliminary hearings under K.S.A. 44-534a or K.S.A. 2001 Supp. 44-551.

Not every alleged error in law or in fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide both timely notice and written claim of the accidental injury?
- (4) Is there any defense that goes to the compensability of the claim?<sup>1</sup>

Additionally, the Board may review those preliminary hearing orders where a judge has exceeded his or her jurisdiction in awarding or denying the benefits requested.<sup>2</sup>

K.S.A. 44-534a grants an ALJ the jurisdiction to determine questions dealing with the ongoing medical care to be provided a claimant in a workers compensation situation. The questions dealing with claimant's medical treatment are clearly within the jurisdiction of the ALJ.

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<sup>1</sup> K.S.A. 44-534a.

<sup>2</sup> K.S.A. 2001 Supp. 44-551.

The issues raised by claimant do not fall under any of the specific jurisdictional issues listed in K.S.A. 44-534a, nor has it been shown that the Special ALJ exceeded his jurisdiction under K.S.A. 2001 Supp. 44-551.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>3</sup>

The Board finds it does not, at this time, have jurisdiction to consider the issues raised by claimant. Therefore, claimant's appeal of this matter should be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the May 10, 2004 preliminary hearing Order of Special Administrative Law Judge Vincent L. Bogart remains in full force and effect and the appeal by claimant in this matter should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2004.

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BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant  
Kim R. Martens, Attorney for Respondent and its Insurance Carrier  
Vincent L. Bogart, Special Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>3</sup> *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984); *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).